



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5074

Introduced 2/7/2012, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 1961. Adds the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law (RICO) as a new Article of the Code. Provides that it is unlawful for any person: (1) who is employed by or associated with any enterprise, knowingly to conduct or participate, directly or indirectly, in such enterprise's affairs through either a pattern of predicate activity (specified criminal offenses) or the collection of unlawful debt; or (2) knowingly to acquire or maintain, directly or indirectly, through either a pattern of predicate activity or the collection of unlawful debt, any interest in, or control of, to any degree, of any enterprise, real property, or personal property of any character, including money. Establishes criminal penalties and civil remedies. Provides that any violation of the Article is subject to the remedies, procedures, and forfeiture as set forth in the money laundering statute. Effective immediately.

LRB097 16525 MRW 61694 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Article 33G as follows:

6 (720 ILCS 5/Art. 33G heading new)

7 ARTICLE 33G.

8 ILLINOIS STREET GANG AND RACKETEER INFLUENCED AND CORRUPT

9 ORGANIZATIONS LAW

10 (720 ILCS 5/33G-1 new)

11 Sec. 33G-1. Short title. This Article may be cited as the
12 Illinois Street Gang and Racketeer Influenced and Corrupt
13 Organizations Law (or "RICO").

14 (720 ILCS 5/33G-2 new)

15 Sec. 33G-2. Legislative declaration. The substantial harm
16 inflicted on the people and economy of this State by pervasive
17 violent street gangs and other forms of enterprise criminality,
18 is legitimately a matter of grave concern to the people of this
19 State who have a basic right to be protected from such criminal
20 activity and to be given adequate remedies to redress its
21 harms. Whereas the current laws of this State provide

1 inadequate remedies, procedures and punishments, the Illinois
2 General Assembly hereby gives the supplemental remedies of the
3 Illinois Street Gang and Racketeer Influenced and Corrupt
4 Organizations Law full force and effect under law for the
5 common good of this State and its people.

6 (720 ILCS 5/33G-3 new)

7 Sec. 33G-3. Definitions. As used in this Article:

8 (a) "Another state" means any State of the United States
9 (other than the State of Illinois), or the District of
10 Columbia, or the Commonwealth of Puerto Rico, or any territory
11 or possession of the United States, or any political
12 subdivision, or any department, agency, or instrumentality
13 thereof.

14 (b) "Enterprise" includes (1) any individual, sole
15 proprietorship, partnership, corporation, association,
16 business or charitable trust or other legal entity, and (2) any
17 group of individuals or other legal entities, or any
18 combination thereof, associated in fact although not itself a
19 legal entity. An association in fact must be held together by a
20 common purpose, apart from an individual purpose or purposes,
21 but it need not be hierarchically structured or otherwise
22 specially configured. As used in this Article, "enterprise"
23 includes licit and illicit enterprises.

24 (c) "Predicate activity" means:

25 (1) any act, attempt, endeavor, solicitation, or

1 conspiracy that is punishable by imprisonment for more than
2 one year, and constitutes a violation or violations of any
3 of the following provisions of the laws of the State of
4 Illinois (as amended or revised as of the date the activity
5 occurred or, in the instance of a continuing offense, the
6 date that charges under this Article are filed in a
7 particular matter in the State of Illinois):

8 (i) under the Criminal Code of 1961: 8-1.2
9 (solicitation of murder for hire), 9-1 (first degree
10 murder), 9-3.1 (concealment of homicidal death), 9-3.3
11 (drug-induced homicide), 10-1 (kidnapping), 10-2
12 (aggravated kidnapping), 10-3 (unlawful restraint),
13 10-3.1 (aggravated unlawful restraint), 10-4 (forcible
14 detention), 10-5 (child abduction), 10-7 (aiding and
15 abetting child abduction), 10-9 (trafficking of
16 persons, involuntary servitude, and related offenses),
17 11-6 (indecent solicitation of a child), 11-6.5
18 (indecent solicitation of an adult), 11-9.1 (sexual
19 exploitation of a child), 11-9.2 (custodial sexual
20 misconduct), 11-14.4(a)(1) (promoting juvenile
21 prostitution), 11-15.1 (soliciting for a juvenile
22 prostitute), 11-14.3(a)(2)(A) or 11-14.3(a)(2)(B)
23 (promoting prostitution), 11-16 (pandering),
24 11-14.4(a)(1) (promoting juvenile prostitution),
25 11-17.1 (keeping a place of juvenile prostitution),
26 11-18.1 (patronizing a juvenile prostitute),

1 11-14.4(a)(2) or 11-14.4(a)(3) (promoting juvenile
2 prostitution), 11-19.1 (juvenile pimping and
3 aggravated juvenile pimping), 11-14.4(a)(4) (promoting
4 juvenile prostitution), 11-19.2 (exploitation of a
5 child), 12-2 (aggravated assault), 12-3.05 or 12-4
6 (aggravated battery), 12-4.1 (heinous battery), 12-4.2
7 (aggravated battery with a firearm), 12-4.2-5
8 (aggravated battery with a machine gun or
9 silencer-equipped firearm), 12-4.7 (drug-induced
10 infliction of great bodily harm), 12-6.1 or 12-6.5
11 (compelling organization membership of persons),
12 12-6.4 (criminal street gang recruitment), 12-7.3
13 (stalking), 12-7.4 (aggravated stalking), 12-7.5
14 (cyber-stalking), 12-11 (home invasion), 12-11.1
15 (vehicular invasion), 11-1.20 or 12-13 (criminal
16 sexual assault), 11-1.30 or 12-14 (aggravated criminal
17 sexual assault), 11-1.40 or 12-14.1 or (predatory
18 criminal sexual assault of a child), 11-1.60 or 12-16
19 (aggravated criminal sexual abuse), 16-16.1 or 24-3.9
20 (aggravated possession of a stolen firearm), 18-1
21 (robbery), 18-2 (armed robbery), 18-3 (vehicular
22 hijacking), 18-4 (aggravated vehicular hijacking),
23 18-5 (aggravated robbery), 19-1 (burglary), 19-2
24 (possession of burglary tools), 19-3 (residential
25 burglary), 20-1 (arson), 20-1.1 (aggravated arson),
26 20-1.2 (residential arson), 20-1.3 (place of worship

1 arson), 20-2 (possession of explosives), 20.5-5
2 (causing a catastrophe), 20.5-6 (possession of a
3 deadly substance), 24-1.2 (aggravated discharge of a
4 firearm), 24-1.2-5 (aggravated discharge of a machine
5 gun or silencer equipped firearm), 24-1.6 (aggravated
6 unlawful use of a weapon), 24-1.8 (unlawful possession
7 of a firearm by a street gang member), 24-2.2 (unlawful
8 ammunition), 24-3 (unlawful sale of firearms), 24-3.2
9 (unlawful discharge of firearm projectiles), 24-3A
10 (gunrunning), 24-5 (defacing a firearm), 26-5
11 (dog-fighting), 29D-15 (soliciting support for
12 terrorism), 29D-20 (making a terrorist threat), 29D-25
13 (falsely making a terrorist threat), 29D-30
14 (terrorism), 29D-35 (hindering prosecution of
15 terrorism), 31A-1.2 (unauthorized contraband in a
16 penal institution), or 33A-3 (armed violence).

17 (ii) under the Cannabis Control Act: Sections 5
18 (manufacture or delivery of cannabis), 5.1 (cannabis
19 trafficking), or 8 (production or possession of
20 cannabis plants) provided the offense either involves
21 more than 30 grams of any substance containing cannabis
22 or involves more than 20 cannabis sativa plants.

23 (iii) under the Illinois Controlled Substances
24 Act: Sections 401 (manufacture or delivery of a
25 controlled substance), 401.1 (controlled substance
26 trafficking), 405 (calculated criminal drug

1 conspiracy), or 405.2 (street gang criminal drug
2 conspiracy).

3 (iv) under the Methamphetamine Control and
4 Community Protection Act: Sections 15 (methamphetamine
5 manufacturing), or 55 (methamphetamine delivery); or
6 (2) any act, attempt, endeavor, solicitation, or
7 conspiracy involving murder, kidnapping, illegal gambling,
8 arson, robbery, or dealing in a controlled substance or
9 listed chemical (as defined under the laws of the United
10 States in Title 21, United States Code, Section 802), that
11 is chargeable under the laws of another state and
12 punishable by imprisonment for more than one year. Under
13 this Article, the term "chargeable" means the act, attempt
14 or endeavor, solicitation, or conspiracy constitutes an
15 offense under the substantive criminal law of another
16 state, as such laws exist as of the date the activity
17 occurred or, in the instance of a continuing offense, the
18 date that charges under this Article are filed in a
19 particular matter in the State of Illinois, but it does not
20 include any procedural defenses under the laws of another
21 state.

22 (d) "Pattern of predicate activity" means:

23 (1) at least 2 occurrences of predicate activity
24 related to the affairs of an enterprise in the form of an
25 act, attempt, endeavor, solicitation, or conspiracy, or
26 any combination thereof; and

1 (2) at least one of which occurs after the effective
2 date of this Article, and the last of which falls within 10
3 years (excluding any period of imprisonment) after the
4 prior occurrence of predicate activity;

5 (e) "Unlawful debt" means a debt:

6 (1) incurred or contracted in the business of gambling
7 activity that was in violation of the law of the United
8 States, or the State of Illinois or another state, or any
9 political subdivision thereof, and that is unenforceable
10 under federal law, or the laws of the State of Illinois or
11 another state, in whole or in part as to principal or
12 interest, or

13 (2) that was incurred in connection with the business
14 of lending money or other things of value in violation of
15 the law of the United States, or the laws of the State of
16 Illinois or another state, or political subdivision
17 thereof at a rate usurious under federal law, or the laws
18 of the State of Illinois or another state, where the
19 usurious rate is at least twice the enforceable rate;

20 (f) "Unlawful death" includes the following offenses:
21 under the Criminal Code of 1961: Sections 9-1 (first degree
22 murder), 9-2 (second degree murder), 9-3 (voluntary
23 manslaughter and reckless homicide), or 9-3.2 (involuntary
24 manslaughter).

25 (720 ILCS 5/33G-4 new)

1 Sec. 33G-4. Prohibited activities. Under this Article:

2 (a) It is unlawful for any person:

3 (1) who is employed by or associated with any
4 enterprise, knowingly to conduct or participate, directly
5 or indirectly, in such enterprise's affairs through either
6 a pattern of predicate activity or the collection of
7 unlawful debt; or

8 (2) knowingly to acquire or maintain, directly or
9 indirectly, through either a pattern of predicate activity
10 or the collection of unlawful debt, any interest in, or
11 control of, to any degree, of any enterprise, real
12 property, or personal property of any character, including
13 money.

14 (b) It is unlawful for any person knowingly to attempt to
15 violate, or knowingly conspire to violate, this Article.
16 Notwithstanding any other provision of law, in any prosecution
17 for a conspiracy to violate this Article, no person may be
18 convicted of such conspiracy unless an overt act in furtherance
19 of such agreement is alleged and proved to have been committed
20 by him or by a coconspirator, but the commission of such overt
21 act need not itself constitute predicate activity underlying
22 the specific violation of this Article.

23 (c) The application of a remedy under this Article does not
24 preclude the application of other criminal, civil, or
25 administrative remedies under this Article or any other
26 provision of law. Any person prosecuted under this Article may

1 be convicted and sentenced either:

2 (1) for the offense of conspiring to violate this
3 Article, and for any other particular offense or offenses
4 that may be one of the objects of a conspiracy to violate
5 this Article; or

6 (2) for the offense of violating this Article, and for
7 any other particular offense or offenses that may
8 constitute predicate activity underlying a violation of
9 this Article.

10 (d) It is not a defense to any violation of this Article
11 that a defendant has been formerly prosecuted for an offense
12 based upon the same facts, within the meaning of Section 3-4 of
13 this Code, that thereafter serves as any portion of the
14 underlying predicate activity in a subsequent prosecution
15 under this Article, unless the former prosecution was
16 terminated by a final order or judgment, even if entered before
17 trial, which required a determination inconsistent with any
18 fact necessary to a conviction in the subsequent prosecution
19 under this Article.

20 (e) In any criminal prosecution under this Article, the
21 court may permit the introduction into evidence, as an
22 admission or self-incriminating verbal act by a defendant, any
23 certified court document relating to that defendant, including
24 charging instruments, judgments of conviction, or transcripts
25 of previous court proceedings underlying any prior conviction
26 of that defendant, that may otherwise constitute evidence of a

1 violation of this Article. The finder of fact may consider such
2 court documents against that defendant, but the admission of
3 the court documents shall not estop the defendant from
4 challenging, in the criminal prosecution under this Article,
5 any factual matters asserted in the court documents or any
6 inferences to be drawn therefrom.

7 (720 ILCS 5/33G-5 new)

8 Sec. 33G-5. Penalties. Under this Article, notwithstanding
9 any other provision of law:

10 (a) Any violation of subsection (a) of Section 33G-4 of
11 this Article shall be sentenced as a Class X felony with a
12 special term of imprisonment of not less than 10 years and not
13 more than 30 years, or the sentence applicable to the
14 underlying predicate activity, whichever is higher, and the
15 sentence imposed shall also include restitution, and or a
16 criminal fine, jointly and severally, up to \$250,000 or twice
17 the gross amount of any intended proceeds of the violation, if
18 any, whichever is higher.

19 (b) Any violation of subsection (b) of Section 33G-4 of
20 this Article shall be sentenced as a Class X felony with a
21 special term of imprisonment of not less than 7 years and not
22 more than 30 years, and the sentence imposed shall also include
23 restitution, and or a criminal fine, jointly and severally, up
24 to \$250,000 or twice the gross amount of any intended proceeds
25 of the violation, if any, whichever is higher.

1 (c) Wherever the unlawful death of any person or persons
2 results as a necessary or natural consequence of any violation
3 of this Article, the sentence imposed on the defendant shall
4 include an enhanced term of imprisonment of at least 25 years
5 up to natural life, in addition to any other penalty imposed by
6 the court, provided:

7 (1) the death or deaths were reasonably foreseeable to
8 the defendant to be sentenced; and

9 (2) the death or deaths occurred when such defendant
10 was otherwise engaged in the violation of this Article as a
11 whole.

12 (d) A sentence of probation, periodic imprisonment,
13 conditional discharge, impact incarceration or county impact
14 incarceration, court supervision, withheld adjudication, or
15 any pretrial diversionary sentence or suspended sentence, is
16 not authorized for a violation of this Article.

17 (720 ILCS 5/33G-6 new)

18 Sec. 33G-6. Remedial proceedings, procedures, and
19 forfeiture. Under this Article:

20 (a) The circuit court shall have jurisdiction to prevent
21 and restrain violations of this Article by issuing appropriate
22 orders, including:

23 (1) ordering any person to disgorge illicit proceeds
24 obtained by a violation of this Article or divest himself
25 or herself of any interest, direct or indirect, in any

1 enterprise or real or personal property of any character,
2 including money, obtained, directly or indirectly, by a
3 violation of this Article;

4 (2) imposing reasonable restrictions on the future
5 activities or investments of any person or enterprise,
6 including prohibiting any person or enterprise from
7 engaging in the same type of endeavor as the person or
8 enterprise engaged in, that violated this Article; or

9 (3) ordering dissolution or reorganization of any
10 enterprise, making due provision for the rights of innocent
11 persons.

12 (b) Any violation of this Article is subject to the
13 remedies, procedures, and forfeiture as set forth in
14 subsections (f) through (s) of Section 29B-1 of this Code.

15 (720 ILCS 5/33G-7 new)

16 Sec. 33G-7. Severability. If any clause, sentence, Section
17 or provision, or part of this Article or the application
18 thereof to any person or circumstance shall be adjudged to be
19 unconstitutional, the remainder of this Article or its
20 application to any person or circumstances other than those to
21 which it is held invalid shall not be affected thereby.

22 (720 ILCS 5/33G-8 new)

23 Sec. 33G-8. Construction. In interpreting the provisions
24 of this Article, the court, because of its remedial purposes,

1 shall construe them liberally. Nothing in this Article shall
2 preclude the imposition of additional criminal penalties under
3 any provision of Federal law, or the laws of the State of
4 Illinois or another state, or any other law, or the affording
5 of any remedies in addition to those provided for in this
6 Article. In addition, the court shall construe this Article in
7 light of the provisions contained in Title IX of Public Law
8 91-452, 84 Stat. 922 (as amended in Title 18, United States
9 Code, Section 1961-1968), wherever substantially similar
10 language is used in such Title and this Article, but where such
11 language indicates an intent to depart from such Title, the
12 court shall interpret the language as herein provided.

13 (720 ILCS 5/33G-9 new)

14 Sec. 33G-9. Limitations. Under this Article,
15 notwithstanding any other provision of law, but otherwise
16 subject to the periods of exclusion from limitation as provided
17 in Section 3-7 of this Code, the following limitations apply:

18 (a) Any action, proceeding, or prosecution brought under
19 this Article must commence within 5 years of one of the
20 following dates, whichever is latest:

21 (1) the date of the commission of the last occurrence
22 of predicate activity in a pattern of such activity, in the
23 form of an act, attempt, endeavor, or solicitation,
24 underlying the alleged violation of this Article; or

25 (2) in the case of an action, proceeding, or

1 prosecution, based upon a conspiracy to violate this
2 Article, the date that the last objective of the alleged
3 conspiracy was accomplished, defeated or abandoned
4 (whichever is later); or

5 (3) the date any minor victim of the violation attains
6 the age of 18 years or the date any victim of the violation
7 subject to a legal disability thereafter gains legal
8 capacity; or

9 (4) the date that any alleged violation of this
10 Article, including injury, cause, pattern, or identity of
11 the violator or violators, was otherwise discovered in the
12 exercise of good faith.

13 (b) Any action, proceeding, or prosecution brought under
14 this Article may be commenced at any time against all
15 defendants if the conduct of any defendant, or any part of the
16 overall violation, resulted in the unlawful death of any person
17 or persons.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.